Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

RU WANG,

Petitioner,

v.

THE NEW YORK CITY
DEPARTMENT OF FINANCE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court erred in holding that the associate tax auditors were not similarly situated even though they were subject to the exact same tasks and standards because the job title was different than tax auditors?

What constitutes a similarly situated employee, the Eleventh Circuit standard that focuses on conduct or the much narrower Second Circuit standard which requires a comparison to an employee who is similarly situated in all material respects?

Did the Court not deny Petitioner due process by failing to allow her to add two years of production results together for comparison with other similarly situated tax auditors?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Cited Authorities	iv
Table of Appendices	v
Opinions Below	1
Statement of Jurisdiction	1
Statutory Provision Involved	1
Statement of the Case	2
1. Substantial Evidence in the Record Below Reflects Disparate Treatment.	2
2. The Court Held that the Associate Tax Auditors Were Not Similarly Situated Even Though They Were Subject to the Exact Same Tasks and Standards in the Year Ending June, 1991 Because the Job Title was Different Than Tax Auditors.	4
3. Proceeding Below.	5
Reasons for Granting the Writ	6

Contents

Page

I. The Decision Of The Second Circuit Court Of Appeals Conflicts With The Decision Of The Supreme Court And With Other Circuits. 6

A. The Standard of What Is A Similarly Situated Employee Developed By The Second Circuit And Other Circuits Is So Narrow That It Makes It Extremely Difficult to Meet The Definition. 6

II. The Questions Presented Are Important. 7

III. The Decision Of The Court Of Appeals Has A Particularly Debilitating Effect On Minority Employees. 9

Conclusion 9

TABLE OF CITED AUTHORITIES

Page

Cases:

Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997) 7

Maniccia v. Brown, 171 F.3d 1364 (11th Cir. 1999) 7, 8

Mazzella v. RCA Global Communications Inc., 642 F. Supp. 1531 (S.D.N.Y. 1986), *aff'd*, 814 F.2d 653 (2d Cir. 1986) 7

Shumway v. United Parcel Service, 118 F.3d 60 (2d Cir. 1997) 7

Williams v. Ford Motor Company, 14 F.3d 1305 (8th Cir. 1994) 8

Statutes:

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 5

28 U.S.C. § 1331 5

28 U.S.C. § 1367 5

42 U.S.C. § 2000 *et seq.* 5

42 U.S.C. § 2000e-2(a)(1) 1, 2

42 U.S.C. § 2000e(5)(f) 5

TABLE OF APPENDICES

Page

Appendix A — Summary Order Of The United States Court Of Appeals For The Second Circuit Dated June 22, 2000 And Filed June 23, 2000 ..... 1a

Appendix B — Memorandum And Order Of The United States District Court For The Eastern District Of New York Dated July 21, 1999 And Filed July 22, 1999 ..... 4a

Appendix C — Judgment Of The United States Court Of Appeals For The Eastern District Of New York Dated July 27, 1999 And Filed July 29, 1999 .. 59a

Appendix D — Order Of The United States Court Of Appeals For The Second Circuit Denying Motion For Panel Rehearing Dated And Filed December 1, 2000 ..... 60a

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Second Circuit Court of Appeals in this case.

OPINIONS BELOW

The Second Circuit (App. A) is an unreported judgment and opinion, to wit: *Ru Wang v. The New York City Department of Finance*, Case No. 99-9020. The district court opinion (App. B) and judgment (App. C) is unreported, to wit: *Ru Wang v. The New York City Department of Finance*, 96 CIV 5170 (JG).

STATEMENT OF JURISDICTION

The decision denying the motion to reargue was entered on December 1, 2000. (App. D).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1).

Section 2000e-2(a)(1) states in relevant part:

> It shall be an unlawful employment practice for employer —
>
> (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to the

compensation, terms, conditions, or privileges of employment, because of such individuals's race, color, religion, sex or national origin.

STATEMENT OF THE CASE

Petitioner commenced an action in the United States District Court based in part due to being terminated due to her national origin and retaliation which violated 42 U.S.C. § 2000e-2(a)(1).

Petitioner is a Chinese-American commenced an action in Federal Court in July, 1996, based on claims of national origin and retaliation discrimination in connection with her employment regarding her termination with defendant. Put simply, Petitioner submits that she was subjected to disparate treatment which caused her termination.

1. Substantial Evidence in the Record Below Reflects Disparate Treatment.

Petitioner was terminated allegedly due to low production, obtaining waivers close to due date, and insubordination. However, the record reflects that Petitioner was not treated equally. For example, the amount of cases Petitioner closed was more, equal or close to the following Non-Chinese co-workers, Holder, Griffiths, Nash and Shafik. (The facts as set forth in the petition can easily be verified by calling up the record below.)

The evidence establishes that Petitioner was similarly situated to other auditors in that they had the same job responsibilities and were held to the same standards even though job title of auditor had several levels.

For example, at the end of June 30, 1989, Petitioner was better than an associate tax auditor, Mr. Roger Holder. Petitioner closed at least fourteen cases with assessments about $242,753.17, while Mr. Holder closed two cases with an assessment of $38,181.66. On top of that, Mr. Holder expired two cases. (Let the statute of limitation expire so that tax could no longer be collected.)

As compared to Ms. Cashin, Petitioner closed about fourteen cases with $273,408.17. Ms. Cashin closed six cases with $68,000, also expired one case.

More specifically, regarding Mr. Griffiths, he got a promotion from tax auditor to associate tax auditor in June 30, 1990. He closed three cases with $274,762.72, a revised audit and an accepted audit did not count as cases. Petitioner closed an out of town case which involved independent work. At the end of June 30, 1990, Petitioner accumulated 24 closed cases for about $500,000 in assessments for three and a half years and was just as qualified as Mr. Griffiths in closing cases.

Also, Petitioner helped out in reviewing fifteen cases; therefore, a total of 296 cases were closed. Ms. Vera Nash in June, 1992 closed 310 cases. She got a superior rating but Petitioner received an unsatisfactory rating.

Petitioner did better than Mr. Motayam Shafik in closing cases. Since Shafik and the Unit Head were Egyptians, Petitioner was rated lower because they discriminated against her national origin. Petitioner was never insubordinate nor did she ever fail to follow orders and always was a dedicated employee. In addition, her inventory was substantially lower than other co-workers. In fact, her inventory was less than 100 cases while other exceeded 200.

Moreover, there are no official production reports, but a handwritten report which was done in connection with the EEOC investigation. The production report is extremely suspect. For example, Vera Nash was out on maternity leave but somehow the handwritten production report prepared for the EEOC investigation, as opposed to the monthly, quarterly, and yearly computer generated production reports which the defendant refused to produce in the litigation, reflects that Ms. Nash continued to process cases when she was on maternity leave.

Another example of disparate treatment occurred with the use of the waiver. It was common practice in the office to obtain the waivers after the 90 day guideline and a number of non-Chinese co-workers Cashin, Ruiz, Holder and Hall were never disciplined for it.

2. The Court Held that the Associate Tax Auditors Were Not Similarly Situated Even Though They Were Subject to the Exact Same Tasks and Standards in the Year Ending June, 1991 Because the Job Title was Different Than Tax Auditors.

It should be noted that the Court stated that some of these employees were not similarly situated since they were Associate Tax Auditors.

The tax auditor was one level below associate tax auditor; however, in the year ending June, 1991 both the tax auditor and the associate tax auditor were held to the same standards and tasks.

3. Proceeding Below.

Petitioner commenced an action in the United States District Court for the Southern District of New York (Gleason) alleging that she had been discriminated against by reason of her national origin and retaliation pursuant to the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000 *et seq*. Subject matter jurisdiction over the action was invoked pursuant to 28 U.S.C. §§ 1331 and 1367 and 42 U.S.C. § 2000e(5)(f). The Respondent moved for Summary Judgment and the motion for Summary Judgment was granted by Summary Judgment dated July 29, 1999. The notice of appeal was filed on August 25, 1999. Subject matter jurisdiction rested with the Court of Appeals as the matter was an appeal from a final order of a United States District Court, 28 U.S.C. § 1291.

The Summary Judgment was granted due to the Court finding that a number of employees were in fact treated differently (more favorably than appellant) but concluded that were not similarly situated since they were associate tax auditors

The Court of Appeals adopted the district court's opinion and affirmed the district's court judgment. (App. A).

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE SECOND CIRCUIT COURT OF APPEALS CONFLICTS WITH THE DECISION OF THE SUPREME COURT AND WITH OTHER CIRCUITS.

A. The Standard of What Is A Similarly Situated Employee Developed By The Second Circuit And Other Circuits Is So Narrow That It Makes It Extremely Difficult to Meet The Definition.

The Court of Appeals erred in affirming the granting of summary judgement because the standard is so narrow it is virtually impossible to meet. Moreover the standard despite the fact that uniform policies apply to various employees equally allow the discriminating employer to escape liability because the employees do not have the same job title. In the case at bar, the Court stated that some of these employees were not similarly situated since they were Associate Tax Auditors.

The tax auditor was one level below associate tax auditor; however, in the year ending June, 1991 both the tax auditor and the associate tax auditor were held to the same standards and tasks. Put simply, they had the same exact job responsibilities. However, the respondent was allowed to escape liability due to the job title being different and thus they were not considered similarly situated.

II.

THE QUESTIONS PRESENTED ARE IMPORTANT.

The questions presented are important. As the Court is aware, in order to prove discrimination in an employment setting, disparate treatment is the fundamental method of proof. Further clarification regarding the circumstances of when an employer is vicariously liable for disparate treatment is of critical importance to employers and employees. The Second Circuit follows a standard that to be similarly situated, the individuals with whom a plaintiff attempts to compare herself must be similarly situated in all material respects. Thus, for example, if there is a uniform lateness policy applicable to all non-managerial level employees, one could only compare the plaintiff with one who reports to the same supervisor, has the same job title and the same exact job duties. *See Shumway v. United Parcel Service*, 118 F.3d 60, 64 (2d Cir. 1997) in which the Court held that in order to be similarly situated, other employees must have reported to the same supervisor as the plaintiff, must have been subject to the same standards regarding performance evaluations and discipline, and must have engaged in conduct similar to the plaintiff's without such mitigating circumstances that would distinguish their conduct or the appropriate discipline for it. *See also Mazzella v. RCA Global Communications Inc.*, 642 F. Supp. 1531, 1547 (S.D.N.Y. 1986), *aff'd*, 814 F.2d 653 (2d Cir. 1986).

In *Holifield v. Reno*, 115 F.3d 1555, 1562 (11th Cir. 1997), the Eleventh Circuit appears to follow a much less stringent standard as to who would be considered similarly situated. In short, one focuses on the conduct to make sure that it is comparable. *Maniccia v. Brown*, 171 F.3d 1364

(11th Cir. 1999). The inquiry centers on whether the individuals were involved in or accused the same or similar conduct and were disciplined in different ways. *Williams v. Ford Motor Company*, 14 F.3d 1305 (8th Cir. 1994). Thus, for example, if there was a uniform policy concerning lateness applied to all non-managerial level employees, the Eleventh Circuit would hold that the employees would be similarly situated even though they do not have the same job title and report to different supervisors. However, the Second Circuit would require that the employees be similarly situated in all respects (supervisor, job title, job duties etc.).

On low production, or termination, the production reports were fraudulent, and there was never evidence to prove certain number of closed cases constitutes termination. The Courts should consider alternatives such as historical figures, averaging of the years, and accumulated years total. A simple year end numeric comparison between tax auditors misled the Court. The Respondent and all courts compared the Petitioner cumulatively over three years, sometimes even five years. However, when Petitioner added two years of production results together, she was ignored.

III.

THE DECISION OF THE COURT OF APPEALS HAS A PARTICULARLY DEBILITATING EFFECT ON MINORITY EMPLOYEES.

The Second Circuit standard has a particularly debilitating effect on minority employees. The narrow standard employed by the Second Circuit allows employers such as the respondent to escape liability despite the fact that the District Court below acknowledged that there was disparate treatment but that the plaintiff did not hold the exact same job title. In sum, the respondent should not be able to shield themselves from liability due to the extraordinarily narrow standard employed by the Second Circuit as to what constitutes a similarly situated employee.

CONCLUSION

For the reasons set for above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED JUNE 22, 2000 AND FILED JUNE 23, 2000

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 22nd day of June, Two Thousand.

PRESENT: HONORABLE JOSEPH M. McLAUGHLIN
HONORABLE FRED I. PARKER
Circuit Judges,
HONORABLE PETER C. DORSEY
*District Judge.**

No. 99-9020

RU WANG,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF FINANCE,

Defendant-Appellee.

* * *

---

* The Honorable Peter C. Dorsey, of the United States District Court for the District of Connecticut, sitting by designation.

Appendix A

Appeal from the United States District Court for the Eastern District of New York, John Gleeson, *Judge*.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the decision of said District Court be and it hereby is AFFIRMED.

Plaintiff-Appellant Ru Wang, *pro se*, appeals from a judgment of the District Court, entered July 29, 1999, upon a July 21, 1999 memorandum and order, granting summary judgment to Defendant-Appellee New York City Department of Finance (the "Department"). On October 22, 1996, Wang filed a complaint, alleging that the Department failed to promote her and eventually terminated her based on her national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* After an exhaustive analysis of the parties' briefs and supporting materials, the District Court held that (1) Wang's failure to promote claims were time-barred and did not fall under the continuing violation exception, and (2) Wang did not produce sufficient evidence to establish the prima facie element that her termination occurred under circumstances giving rise to an inference of discrimination and, alternatively, Wang did not produce sufficient evidence that would permit a reasonable juror to find that the Department's legitimate, non-discriminatory reason for the termination was pretextual. *See Wang v. New York City Dep't of Finance*, No. 96-CV-5170(JG), 1999 WL 529550 (E.D.N.Y. Jul. 21, 1999).

On appeal, Wang argues that (1) although she was more productive than certain of her co-workers (including George Johnson, whom Wang failed to cite as a comparator to the

district court), they received better performance evaluations, and (2) although she and her co-workers had different titles, they had the same job description and reported to the same supervisors. In addition, without factual support in the record or having raised the issue below, Wang intimates that the Department's production reports were falsified in connection with an investigation by the Equal Employment Opportunity Commission. After carefully reviewing the record below and Wang's arguments on appeal, we affirm for substantially the same reasons as stated in the District Court's memorandum and order and on the ground that Wang's arguments pertaining to Johnson and the production reports both lack factual support and have been waived by Wang, *see Kraebel v. New York City Dep't of Hous. Preservation and Dev.*, 959 F.2d 395, 401 (2d Cir. 1992) ("[We have] repeatedly held that if an argument has not been raised before the district court, we will not consider it.").

For the reasons set forth above, the judgment of the district court is AFFIRMED.

FOR THE COURT,
Roseann B. MacKechnie, Clerk

By: s/ Lucille Carr
Lucille Carr, Operations Manager

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK DATED JULY 21, 1999 AND FILED JULY 22, 1999

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

96-CV-5170 (JG)

RU WANG,

Plaintiff,

– against –

N.Y.C. DEPARTMENT OF FINANCE,

Defendant.

MEMORANDUM AND ORDER

* * *

JOHN GLEESON, United States District Judge:

Plaintiff *pro se* Ru Wang, a Chinese-American, commenced this action pursuant to Title VII of the Civil Rights Act of 1964, 24 U.S.C. § 2000e *et seq.*, alleging that she was denied promotions and that her employment was terminated on the basis of her national origin. The defendant New York City Department of Finance ("DOF") has moved for summary judgment under Federal Rule of Civil Procedure 56(b). For the reasons set forth below, the motion is granted.

Appendix B

BACKGROUND

Ru Wang was born in Taiwan in 1956 and immigrated to the United States with her parents in 1969. She received a B.S. in accounting from Brooklyn College in 1984, and a certificate in computer science from the same school in 1985. Wang began working for the DOF on February 2, 1987 as a Tax Auditor.

A. *Bankruptcy and Assignment Unit (February 1987 — June 1989)*

Wang was initially assigned to the Bankruptcy and Assignment Unit of the Audit Department ("B&A"), where she was responsible for auditing corporate, commercial rent, and bankruptcy tax cases. To ensure that the DOF did not run afoul of the statute of limitations, one of Wang's responsibilities was to obtain extensions of time from taxpayers to conduct the tax audits. The extensions were known as "waivers," and DOF guidelines indicated that such waivers were to be obtained by a minimum of ninety days (three months) prior to the expiration of the statute of limitations. B&A's Unit Head was Nagy Ibrahim, but Wang reported directly to her Group Chief, Robert Weissman.

In June 1988, Wang received a performance evaluation from Weissman for the year ending June 30, 1988 ("June 1988 Evaluation"). (Exhibit B to Declaration of Paul Aronson, March 30, 1999.)[1] Weissman rated Wang's overall

1. Annexed to Aronson's declaration are exhibits lettered A through CC. Here, those exhibits will be abbreviated as Def.'s Ex. A through Def.'s Ex. CC.

performance as "conditional," explaining that Wang "has been slow in learning."[2] (*Id.*) For the first and most important task, "to conduct objective audits to determine proper compliance with the tax laws," Weissman gave Wang a "conditional" rating, noting that she "does not as yet have a complete understanding of the tax laws," but also stating that she "just recently completed one year of training." (*Id.*) Wang also received a "conditional" rating for task number four, "management of case inventory by using proper planning and scheduling of time with field appointments." (*Id.*) Weissman explained that Wang "falls into delay tactics of the taxpayers," but that she "has begun to be more aggressive in obtaining field appointments." (*Id.*) Although for two other tasks Wang was as yet "unratable," for the remaining tasks, including the protection of the statute of limitations with timely waivers, Wang met her performance standards and received "good" ratings. (*Id.*) Weissman commented that Wang needed to improve her attendance. In addition, he noted that Wang "has worked well when she has a deadline (bar date)."[3] (*Id.*)

---

2. All of the employee evaluations in this case come in the form of standardized DOF "Sub-Managerial Performance Evaluations," in which the supervisor gives the employee an overall rating as well as ratings for critical tasks that are specific to that employee's position. The critical tasks are listed on the evaluation in order of importance. The available ratings are "unratable," "unsatisfactory," "conditional," "good," "superior," or "outstanding." There is also space for the supervisor to explain the reasoning behind each rating given.

3. Although it is not clear from the face of this document, it appears that Weissman was here referring to the deadlines or "bar dates" created by the statute of limitations.

Appendix B

Although Wang stated at her deposition that she did not agree with the June 1988 Evaluation, at the time she received it, she did not indicate her disagreement to anyone. (Wang Dep. I at 71-73.)[4] Also, she admitted at her deposition that she did not have a complete understanding of the tax laws. (Wang Dep. I at 72.) As for attendance, she said that she came in late "once or twice." (Wang Dep. I at 74.)

Wang received another performance evaluation in January 1989 for the period from July 1, 1988 to January 25, 1989 ("January 1989 Evaluation"). (Def.'s Ex. E.) This time Weissman rated Wang's overall performance as "good," noting that Wang "has improved in four . . . major tasks in six months and shows signs of turning around to be a very good auditor." (*Id.*) On eight of the nine specific tasks, including the two for which he had previously given "conditional" ratings, Weissman rated Wang's performance as "good ." (*Id.*) However, on the second most important task, the protection of the statute of limitations with timely waivers, Wang received a "conditional" rating because she "has not been aggressive with taxpayers in obtaining waivers prior to the three month minimum, [and] as a result few cases were submitted as rushes."[5] (*Id.*) Weissman wrote that, as a result, he was going to "[r]equire waivers on six month notice." (*Id.*) Wang received substantially the same

---

4. Wang was deposed over the course of three days. "Wang Dep. I" refers to the deposition transcript for September 8, 1998, "Wang Dep. II" refers to the transcript for September 24, 1998, and "Wang Dep. III" refers to the transcript for November 24, 1998.

5. This same criticism also also appears in the June 1989 Evaluation. (Def.'s Exs. E and F.)

evaluation, this time dated June 14, 1989, for the year ending June 30, 1989 ("June 1989 Evaluation"). (Def.'s Ex. F.)

Wang admitted at her deposition that she had closed cases after the three month minimum had passed. (Wang Dep. I at 77.) She had "no idea" what Weissman meant when he wrote that she was to obtain waivers six months in advance. (Wang Dep. I at 78, 80.) Wang disagreed with his statement that she had not been aggressive with taxpayers, but admitted that she had not indicated her disagreement at the time she received the evaluations. (Wang Dep. I at 77-80.)

B. *General Corporation Tax Unit (June 1989 — June 1990)*

At the beginning of July 1989, there was a reorganization at DOF and Wang was transferred into the General Corporation Tax Unit ("GCT"). In GCT, Wang continued to perform audits, now involving commercial rent tax cases. (Wang Dep. I at 66.) One of Wang's duties in GCT, as in B&A, was to obtain waivers from taxpayers that tolled the statute of limitations, protecting the city's tax revenues. In GCT, Wang reported to her Group Chief, Colin Jennings. The Unit Head was Volton Hutchinson and the Branch Chief was Martin Blumenkrantz.

When Wang was transferred into GCT, she asked Hutchinson and Blumenkrantz for a promotion. Wang stated at her deposition that Hutchinson said he would give her a promotion. (Wang Dep. I at 90-91.) He never did.

In a memorandum dated December 13, 1989, Colin Jennings cautioned Wang concerning her "failure to comply

with department rules, guidelines, procedures and supervisor's instructions." (Def.'s Ex. G.) Specifically, Jennings mentioned (1) Wang's "failure to maintain an accurate schedule of waivers and protect [the] statute of limitation[s] by obtaining waivers timely [sic] in accordance with the Department policy," and (2) Wang's failure, despite supervisory instruction, "to prepare workpaper's [sic] and case fold[er]s in accordance with standard procedures." (*Id.*) A conference attended by Wang, Jennings, Hutchinson, and Blumenkrantz was held to discuss the subject of this memorandum. (Wang Dep. II at 6.) While it is unclear whether Wang objected to the comment about waivers when she received this memorandum, she stated at her deposition that she could remember only one case that the supervisors brought to her attention, and that the waiver for that case was "immaterial" because the assessment was only $125. (Wang Dep. II at 7-10.) As for poor maintenance of case files, Wang admitted at her deposition that file maintenance had been one of her duties as a Tax Auditor, but denied that she had had a problem. (Wang Dep. II at 8.) Nevertheless, she told her supervisors that she would prepare the work papers as they wanted. (Wang Dep. at 8.)

In a memorandum dated May 11, 1990, Jennings warned Wang that her progress reports indicated that her "production (i.e. completed cases) is significantly below the departments [sic] goals and standards for auditors in your title." (Def's Ex. H.) Jennings noted that a review of Wang's inventory indicated that twenty-five percent of her cases "fail to meet with the department statute guidelines." (*Id.*) Finally, Jennings complained to Wang that her performance to date was below expectation and "that previous discussion with

you regarding your performance has not resulted in any changes." (*Id.*) At her deposition, Wang disagreed with Jennings's comments in this memorandum, but, at the time she received it, she did not protest. (Wang Dep. I at 95-96.)

In a memorandum dated June 20, 1990, Branch Chief Blumenkrantz memorialized a meeting he had that day with Wang, Jennings and R. Trotman, the Acting Unit Chief of GCT. (Def.'s Ex. I.) The meeting concerned three of Wang's cases, which were to expire on June 30, 1990. Wang was "admonished" because she had not yet obtained waivers for any of the cases and because none of the audits were "as of yet presentable for review." (*Id.*) Wang was told that her leave scheduled for June 29 would not be approved unless waivers were obtained for all three cases or she completed the audits, and was warned that "this type of rush work is unsatisfactory and can not be tolerated." (*Id.*) In two of the cases, the taxpayer being audited had told Wang that additional extensions of the limitation period would not be granted and that the cases would have to be completed by the expiration date. Nevertheless, according to her supervisor, Wang had waited until "less than two months to the expiration date," before she requested documents from the taxpayer. (*Id.*)

It is unclear how Wang reacted to this memorandum when she received it. (Wang Dep. I at 97-103.) When confronted with it at her deposition, however, Wang acknowledged that one of her cases had not been presentable for review. According to Wang, because she did not have any documents to conduct an audit and had not conducted a field visit, she had not known whether the assessment she

had made was correct. (Wang Dep. I at 99-100.) Wang blamed the rush work on Group Chief Peggy Codrington, who Wang asserted had been holding the case in order to write up a memorandum to explain why one year had passed with no action on the case. Wang felt that it was not her fault that one year had expired, because "it was not even [her] case." (Wang Dep. I at 101.) In addition, Wang stated that she had not been worried that she had no documents for the other two cases only two months before their expiration date because "it was not [her] concern." (Wang Dep. I at 103.)

On July 16, 1990, Jennings gave Wang a performance evaluation for the year ending June 30, 1990 ("June 1990 Evaluation"). (Def.'s Ex. J.) Jennings rated Wang's overall performance unsatisfactory because she had failed "to adhere to the department guidelines for statute [of limitations] control on numerous occasions," her "production [was] below the standard and goals set by the department and does not commensurate [sic] with her three years of experience," and she "ha[d] not demonstrated her ability to perform at the level of a tax auditor." (*Id.*) For her five most important tasks, Wang's performance was rated "unsatisfactory." (*Id.*) For the other four tasks, she received one "conditional," one "unratable," and, on the least critical tasks, two "goods." (*Id.*) Jennings recommended that Wang "be transferred to a unit where statute control is not required and raising or discussing audit of tax issues are not relevant to the overall performance and production." (*Id.*) Wang disagreed with this evaluation and signed it "under protest." (*Id.*) At her deposition, though, she admitted that she sometimes had not obtained statute of limitation waivers before ninety days. (Wang Dep. I at 84, 107.)

Wang protested Jennings' evaluation to Deputy Commissioner for Audit Glenn Newman. Newman met with Wang on August 3, 1990, to discuss the evaluation. At their meeting, Wang brought up the fact that she had not received a promotion. (Wang Dep. I at 110-11.) On September 5, 1990, Newman issued a memorandum to Wang in which he determined that there was no reason to overrule the evaluation. (Def.'s Ex. K; Declaration of Glenn Newman, May 18, 1999, at ¶ 4 ("Newman Decl.").) Newman listed the following facts as supporting his determination: (1) Wang had completed only three cases in the fiscal year, one of which was only a partial completion, and none of the three were so difficult or complex as to warrant the amount of time spent on it; (2) Wang did not have sufficient contact with taxpayers or did not document such contact appropriately in the case folders as required, and had spent an "extraordinarily low amount of time in the field gathering information;" (3) Wang had a history of poor performance in obtaining waivers at least four months prior to the expiration date, as indicated by her monthly report for May 1990, in which eight of her fourteen cases had expiration dates within four months, and three of the eight within one month; and (4) Wang had been advised by both her Group Chief and her Unit Head that she was to review with them the status of her cases, but had not responded adequately. (Def.'s Ex. K.) Newman noted at the end of his memorandum that, subsequent to Wang's evaluation, she had been transferred to a unit that did not require extensive field work or the monitoring of time limitations. (*Id.*) Addressing Wang directly, Newman stated that it was hoped the "re-assignment to this unit will give you the opportunity to improve your evaluations for later periods." (*Id.*)

Appendix B

On September 13, 1990, after her transfer to another unit, Wang appealed Newman's decision to DOF's Appeal Board. (Def.'s Ex. L.) In a letter attached to the appeal form, Wang detailed the reasons why she believed she deserved a promotion. (Pl.'s Ex. M.)[6] In her letter, Wang alleged that after she did not receive a promotion from Weissman and Ibrahim in 1989, Weissman lied to her about the procedure for appealing the adverse decision, telling her that it would take longer than it generally did. Wang further alleged that Weissman recommended her for promotion, but Ibrahim did not want to promote her, and "ever since then, [Ibrahim] gave me dirty looks when he passed by me." (*Id.*) She decided not to appeal the decision. Then, in GCT, Wang received an unsatisfactory rating from Colin Jennings, and attributed this "to discrimination." (*Id.*) According to Wang, Jennings "tried every possible way not to let me close cases," "tried to blow my waiver," and "was not qualified to do his job." (*Id.*) She wrote that "they didn't want to give me a promotion, so they transferred me out." (*Id.*) After a hearing, the Appeal Board found that Wang had not presented sufficient evidence to justify upgrading the June 1990 Evaluation. (Def.'s Ex. M.)

C. *Desk Audit Unit (July 1990 — April 1992)*

At the end of June 1990, Wang was transferred out of GCT to the Desk Audit Unit ("Desk Audit"), where she processed corporate tax refund requests. She was no longer

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6. On May 26, 1999, plaintiff filed a "Notice of Filing Exhibits" in opposition to defendant's summary judgment motion. Annexed to that notice were lettered and numbered exhibits. Here, those exhibits will be abbreviated as Pl.'s Ex. __.

required to obtain statute of limitations waivers. (Wang Dep. II at 26-27.) Wang's Group Chief in Desk Audit was Soukar George, and the Unit Head was Mohammed Aly.

On January 28, 1991, George gave Wang a performance evaluation for the period from July 9, 1990 to December 31, 1990 ("January 1991 Evaluation").[7] (Def.'s Ex. N.) George rated Wang's overall performance "unsatisfactory" because she had been "repeatedly notified through the weekly and monthly production sheets of her low productivity but still no improvement [sic]." (*Id.*) Wang received "unsatisfactory" ratings for four out of five critical elements of her job performance, and a "conditional" rating for the fifth. (*Id.*) George rated Wang's performance on the most critical task "unsatisfactory" because she "maintained a very low production level as her daily average production is less than one case while the standard calls for at least four simple cases or a minimum of two difficult cases" and "all the cases in [Wang's] inventory are easy and simple cases." (*Id.*) In addition, George commented that Wang "wastes her working hours on telephone calls or away from her desk and/or sitting doing nothing, just opens a file in front of her without working." (*Id.*) Wang did not sign the evaluation. (*Id.*)

When asked at her deposition about her low production level, Wang responded as follows:

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7. In the decision of the Appeal Board discussed above, the Board noted that "[p]er the Human Resources Division, all employees who received overall ratings of 'Conditional' or 'Unsatisfactory' on their Full Annual 1990 evaluation will be reevaluated in January 1991." (Def.'s Ex. M.)

> I didn't have much defense and I don't understand why, because, at that time, I wasn't there long enough, I didn't know how to defend myself. I don't know how to say to him because I was working very hard and I don't understand why he was doing this.

(Wang Dep. II at 44.) She did not deny that George rejected twenty percent of her cases, but argued that "eighty percent of the cases are good." (Wang Dep. II at 44-48.) She also stated that there was "no complexity level according to my understanding because the clerk distributes the cases," and did not agree with George's statement that all of her cases were "easy and simple."[8] (Wang Dep. II at 49.) She denied that she wasted time, asserted that there was no way that George could have known she was on the phone too much because "he was on the other side of the building," and alleged that George was actually the "one who was not working." (Wang Dep. II at 52.)

In a memorandum dated March 7, 1991, George relayed to Mohammed Aly an incident from the day before in which Wang had refused to follow George's instructions regarding the recording of a case adjustment on the computer system. (Def.'s Ex. O.) At her deposition, Wang neither confirmed nor denied that she had refused to follow George's order. (Wang Dep. II at 56-64.)

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8. At another point in Wang's deposition, she stated that when she first started in Desk Audit, George assigned her types of cases with which she had some familiarity. (Wang Dep. III at 122.)

Appendix B

In a memorandum from George to Wang dated March 11, 1991, George wrote that he had cautioned Wang about an incident on January 31, 1991, in which George had requested three times that Wang bring him the file from one of her closed cases so that he could respond to a taxpayer's call. (Def.'s Ex. P.) According to George, Wang "did not want to look for it." (*Id.*) At her deposition, Wang recalled receiving this memorandum, but could not recall whether the incident had actually happened. (Wang Dep. II at 74.)

On May 30, 1991, in a handwritten note on a production report, George again warned Wang about her low production. (Def.'s Ex. Q.) At her deposition, Wang admitted that she had worked three days that week but had closed only two cases. (Wang Dep. II at 80.) Wang also stated that she had "some slow weeks and some more productive weeks," and that "[t]hey all average out the same." (Wang Dep. II at 81.)

In a memorandum dated June 21, 1991, George memorialized a conversation held that day in his office with Wang, in which she was cautioned about her poor productivity during the period from July 1, 1990 to May 30, 1991. (Def.'s Ex. R.) Wang's daily average production, George told her, was 1.15 cases. (*Id.*) At her deposition, Wang stated that her average daily production was not 1.15 cases, but rather 1.27 cases. (Wang Dep. II at 87.)

On July 22, 1991, Wang received what would turn out to be her last performance evaluation ("June 1991 Evaluation"). (Def.'s Ex. S.) This evaluation, given by George, covered the year ending June 30, 1991. George again rated Wang's overall performance "unsatisfactory" because

Appendix B

Wang "was repeatedly notified of her low productivity but still has no improvements." (*Id.*) Wang received an "unsatisfactory" rating for four of five critical tasks. George noted, among other things, that Wang's "daily average production is only 1.15, while the standards for the Unit calls [sic] for at least four simple cases or a minimum of two difficult cases, and all she has are easy and simple cases." (*Id.*) George also wrote that "most of the time [Wang] transfers the calls she receives to my line to answer." (*Id.*) Several cases which Wang had submitted "were rejected to be redone and/or corrected more than once." (*Id.*) Moreover, according to the evaluation, Wang "wastes her working hours on personal telephone calls and talking with employees and away from her desk." (*Id.*) Wang signed this evaluation under protest. (Wang Dep. III at 103.)

At her deposition, Wang conceded that the standard for the unit was four simple cases or at least two difficult cases per day, but asserted that no one in her unit completed four cases per day. (Wang Dep. III at 109.) She said that she closed an average of two cases per day. (Wang Dep. II at 33.) Her cases were rejected for "redo" by George, she explained, because he held them so long for review that she would have to update the interest calculations. As Wang stated,

> this is one of the reasons I recall now and I feel that it was not my fault that I have to do one case twice. And it's using up my time and it's wasting my time. As a result, [George is] making me have low production.

(Wang Dep. III at 113-14.) Wang said that she transferred taxpayer calls to George on only five occasions. (Wang

Dep. III at 116.) She admitted that she had the lowest inventory in the unit, asserted that this was because she was "the best performer in the unit," but then stated that she had the smallest inventory because she was a "trainee." (Wang Dep. III at 118.) When asked about George's comment regarding wasting time on the telephone, Wang responded that she did not make many personal phone calls, that she was actually talking with taxpayers, and that while George was the one who made personal calls, "he got . . . a salary increase on July 1st, 1990." (Wang Dep. III at 120.)

In a memorandum to Wang dated September 10, 1991, George memorialized a discussion he had had with her on September 6, 1991, in which he asked her to make changes to one of her cases. (Def.'s Ex. T.) Wang had refused to make the changes, and told George to make them himself. (*Id.*) At her deposition, Wang asserted that she had told George that she would do what he asked, "and then he pulled away the case" before she could. (Wang Dep. III at 126-27.) Wang alleged that George had lied in the memorandum when he described how she had told him that he should make the changes himself. (Wang Dep. III at 127.)

In a memorandum dated January 29, 1992, George listed eight other incidents that he believed demonstrated unacceptable performance and conduct on the part of Wang. (Def.'s Ex. V.) Wang refused to sign the memorandum. (*Id.*)

D. *Termination (November 1991 — April 1992)*

On November 14, 1991, the DOF notified Wang that she was charged with (1) failing to maintain standards of performance for successive rating periods; (2) engaging in

conduct unbecoming a city employee in that she performed her duties in an improper, inefficient, negligent, and careless manner for successive rating periods; (3) engaging in conduct unbecoming a city employee in that she failed to comply with a written internal rule regarding the timely securing of waivers on four separate occasions; and (4) engaging in conduct unbecoming a city employee in that she failed to obey the lawful orders of a supervisor on four specific occasions. (Def.'s Ex. U; Wang Dep. III at 130-31.)

An informal conference regarding the charges made by the DOF against Wang was held by Kathy Barnett, DOF's "Informal Conference Leader," on March 24, 1992. (Def.'s Ex. W.) Barnett determined that all of the charges against Wang had been established and recommended that her employment be terminated. (*Id.*) On April 8, 1992, a "Step B" conference was held by Donna Rey, DOF's "Step B Conference Leader," pursuant to the collective bargaining agreement between the City of New York and Wang's union, District Council 37, AFSCME. (Def.'s Exs. W and X.) Rey upheld the termination penalty. (Def.'s Ex. X.) Wang's termination became effective on April 10, 1992. (Def.'s Ex. Y.) Wang appealed her termination to the City Office of Labor Relations. (Def.'s Ex. Z.) On June 26, 1992, a conference was held by that office, which Wang and her union representative attended. (Def.'s Ex. Z at 2; Wang Dep III at 208.) Wang did not make allegations of discrimination at the conference, but by then she had filed a discrimination suit in state court. (Wang Dep. III at 209.) In a decision dated July 14, 1992, the City Office of Labor Relations found that Wang's termination was justified and denied her appeal. (Def.'s Ex. Z.)

Appendix B

E. *Procedural History of Discrimination Complaints*

At some point in the second half of 1991, Wang contacted an attorney named Stewart Lee Karlin. (Wang Dep. at 145-46.) On January 27, 1992, Karlin helped Wang file an action in state court. (Plaintiff's "Motion Supplement to the Record," June 29, 1999 ("Pl.'s Supplement");[9] Wang Dep. at 145-47.) It alleged that DOF denied Wang a promotion in 1989 by reason of her national origin, thus violating "Article 14 of the Executive Law of the State of New York and other applicable laws prohibiting discrimination based upon national origin." (Pl.'s Supplement; Def.'s Ex. AA at ¶ 8; Wang Dep. III at 147.) She filed the suit after the DOF notified her on November 14, 1991, that she was charged with failing to maintain standards of performance and engaging in conduct unbecoming a city employee, but before Kathy Barnett determined at the informal conference on March 24, 1992, that those charges had been established and upheld the recommendation that Wang be terminated. Wang lost the suit. (Wang Dep. at 148.)

At her deposition, Wang indicated that sometime after January 24, 1992 she filed another case, this time a "retaliation case," with the New York State Division of

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9. Subsequent to oral argument on this motion, which was held on June 25, 1999, plaintiff filed a "Motion Supplement to the Record." Attached to that motion is a copy of the complaint in the state court action that plaintiff filed on January 27, 1992. The date of that document resolves a discrepancy between plaintiff's June 1992 Equal Employment Opportunity Commission complaint, in which she referred to a state court suit that she filed on January 31, 1992 (Def.'s Ex. AA at ¶ 8), and her deposition, in which she referred to a suit that she filed on January 24, 1992 (Wang Dep. at 139, 144, 172-73).

Human Rights ("DHR").[10] (Wang Dep. at 141, 172-74.) Apparently, the suit alleged that the DOF retaliated against Wang after she filed her state court action. (Wang. Dep. at 173.) Wang apparently lost this case as well. (Wang Dep. at 141.) Neither Wang nor the defendant address the DHR complaint in their papers on this motion.

As stated, Wang's termination became effective on April 10, 1992. On June 27, 1992, she filed a Title VII discrimination complaint against the DOF with the United States Equal Employment Opportunity Commission ("EEOC"). (Def.'s Ex. AA.) The EEOC complaint alleged that the DOF unlawfully discriminated against Wang based on her Chinese national origin when it (1) denied her a promotional opportunity in 1989; (2) fired her for alleged performance problems despite her continued satisfactory performance; and (3) fired her in retaliation for having filed a lawsuit on January 31, 1992 in which she claimed that she was denied promotional opportunities based on her national origin. (*Id.*)

The EEOC subsequently referred the complaint to the DHR, which determined on April 4, 1996, that there was no probable cause to believe that the DOF had engaged in the unlawful discriminatory practices alleged by Wang. (Def.'s Ex. BB.) Wang received a right-to-sue letter from the EEOC on July 31, 1996 (Compl. ¶ 12), and filed the instant action on October 22, 1996. On a standardized Title VII complaint form, Wang alleges that the DOF discriminated against her

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10. In the complaint in this action, Wang indicates that she filed a charge with the DHR or the New York City Commission on Human Rights on March 7, 1992. (Compl. ¶ 9.) This appears to be a reference to the "retaliation case" mentioned by Wang at her deposition.

on the basis of her national origin when it failed to promote her and terminated her employment. (Compl. ¶ 4.) Although there is a space on the complaint form to check off "retaliation" as a form of alleged discriminatory conduct, Wang did not mark that space. (*Id.*) At her deposition, Wang was asked whether the present suit contains a retaliation claim, and she answered that it did not. (Wang Dep. III at 142-43.)

Based on her opposition to the present motion for summary judgment, plaintiff appears to allege the following specific claims of discriminatory conduct by DOF: (1) the denial of a promotion in June 1989, when she was in B&A; (2) the denial of the promotion that she requested sometime between July 1989 and June 1990, while she was in GCT; and (3) the termination of her employment from DOF, which was initiated in November 1991 and concluded in April 1992.

DISCUSSION

A. *The Summary Judgment Standard*

Courts must grant summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining whether material facts are in dispute, courts must resolve all ambiguities and draw all inferences in favor of the non-moving party. *See Kerzer v. Kingly Mfg.*, 156 F.3d 396, 400 (2d Cir. 1998).

The moving party bears the initial burden of demonstrating the absence of any genuine issues of material fact. *See Gallo*

v. Prudential Residential Servs., Ltd. Partnership, 22 F.3d 1219, 1223 (2d Cir. 1994). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. In the language of the Rule, the nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial.' " *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (quoting Fed. R. Civ. P. 56(e)). The non-moving party cannot survive a properly supported motion for summary judgment by resting on its pleadings "without offering 'any significant probative evidence tending to support the complaint.' " *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 290 (1968)). Moreover, the moving party is not required to affirmatively disprove unsupported assertions made by the non-movant. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Conclusory allegations, conjecture, and speculation are "insufficient to create a genuine issue of fact." *Kerzer*, 156 F.3d at 400 (citing *D'Amico v. City of New York*, 132 F.3d 145, 149 (2d Cir.), *cert. denied*, 118 S. Ct. 2075 (1998)).

B. *The Time Bar Under Title VII*

1. *The 300-Day Limit*

For complaints based on Title VII, the plaintiff must file a charge of discrimination with the EEOC before initiating an action in federal court. *See* 42 U.S.C. § 2000e-5(e). Title VII requires a plaintiff to file a charge with the EEOC within 180 days of the alleged unlawful employment action, unless the claimant has already filed the charge with

a state or local equal employment agency, in which case she can file with the EEOC within 300 days of the alleged discriminatory action. *See* 42 U.S.C. § 2000e-5(e); *Van Zant v. KLM Royal Dutch Airlines*, 80 F.3d 708, 712 (2d Cir. 1996); *Ford v. Bernard Fineson Dev. Ctr.*, 81 F.3d 304, 307 n.6 (2d Cir. 1996) (in a Title VII case, "the person bringing the charge must 'initially institute [ ] proceedings' with the state agency."). "In states such as New York that have an agency with the authority to address charges of discriminatory employment practices, the statute of limitations for filing a charge of discrimination with the EEOC is 300 days" regardless of whether the charge was initially filed with a state or local agency. *Butts v. City of New York Dep't of Hous. Preservation and Dev.*, 990 F.2d 1397, 1401 (2d Cir. 1993).[11]

The 300-day period applies here. Plaintiff filed her complaint with the EEOC on June 27, 1992. (Def.'s Ex. AA.) Since the time limit functions as a statute of limitations, *Van Zant*, 80 F.3d at 712 (citing *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982)), plaintiff may not recover for any alleged discriminatory acts that occurred prior to September 1, 1991, unless those acts fall under the continuing violation exception to the 300-day time limit.[12]

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11. This is because of certain waiver provisions contained in the Worksharing Agreements that the DHR has entered into with the EEOC. *See Morris v. Northrop Grumman Corp.*, 37 F. Supp. 2d 556, 566-67 (E.D.N.Y. 1999); *Ford*, 81 F.3d at 307 n.5 (waiver provisions of Worksharing Agreements may determine whether a Title VII claimant is entitled to relief).

12. In her motion to supplement the record, plaintiff argues that her claims based on alleged discriminatory acts committed

(Cont'd)

Appendix B

2. *The Continuing Violation Exception*

The Second Circuit permits an exception to the 300-day time limit in cases that involve a continuing violation. This exception provides that when a plaintiff is subjected to a "continuous practice and policy of discrimination . . . the commencement of the statute of limitations period may be delayed until the last discriminatory act in furtherance of it." *Cornwell v. Robinson*, 23 F.3d 694, 703 (2d Cir. 1994) (quoting *Gomes v. Avco Corp.*, 964 F.2d 1330, 1333 (2d Cir. 1992)). Where a continuing violation is shown, the plaintiff may challenge "all conduct that was a part of that violation, even conduct that occurred outside the limitations period." *Id.* at 704; *see also Lambert v. Genesee Hosp.*, 10 F.3d 46, 53 (2d Cir. 1993) ("if a Title VII plaintiff files an EEOC charge that is timely as to any incident of discrimination in furtherance of an ongoing policy of discrimination, all claims of acts of discrimination under that policy will be timely even if they would be untimely standing alone"), *cert. denied*, 511 U.S. 1052 (1994).

A Title VII plaintiff must clearly assert a continuing violation argument in both the EEOC filing and in the

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before September 1, 1991 are not time-barred because she filed a lawsuit on January 27, 1992. (Pl.'s Supplement.) The filing of that action, however, does not toll the limitations period. Title VII requires that a plaintiff file an action with the EEOC, not with a state court, in order to meet the time-bar, and there is no indication that plaintiff filed a claim of discrimination with the EEOC until June 27, 1992. In any event, even if the 300-day time bar were calculated from January 27, 1992, plaintiff's allegations of discrimination dating from her time in B&A and GCT would still be barred.

complaint. *See Miller v. ITT Corp.*, 755 F.2d 20, 25 (2d Cir.), *cert. denied*, 474 U.S. 851 (1985); *O'Malley v. GTE Service Corp.*, 758 F.2d 818, 821 (2d Cir. 1985). However, when applying this requirement, the administrative charges of a *pro se* litigant should be should be liberally construed. *Streeter v. Joint Indus. Bd. of the Elect. Indus.*, 767 F. Supp. 520, 526 n.7 (S.D.N.Y. 1991).

Here, plaintiff did not explicitly assert a continuing violation in either the EEOC filing or her judicial complaint. In the EEOC filing, however, plaintiff did assert that in 1989 she received a negative employment evaluation that failed to reflect her superior performance; that she was denied a promotion in 1989 because of that evaluation; that she filed a lawsuit in January 1992 "claiming a denial of promotional opportunities;" and that she was discharged in April 1992 despite "continued satisfactory performance." (Def.'s Ex. AA at ¶¶ 5-10.) Similarly, in the instant complaint, which was filed *pro se*, plaintiff asserts, among other things, that Weissman (who was her supervisor from 1987 to 1989) promoted others but failed to promote her despite her comparatively good performance; that she received unfair negative attention for failing to obtain timely waivers (which was one of her job tasks from the time she was hired until June 1990); that "this discrimination continued till the day that I was fired;" and that her termination in April 1992 constituted discriminatory conduct. (Def.'s Ex. CC at ¶¶ 4, 8.) Considering the *pro se* status of the plaintiff, these assertions may be sufficient to assert a continuing violation of Title VII. *See Streeter*, 767 F. Supp. at 526 n.7.

I need not decide that, however, because the alleged acts of discrimination occurring before the 300-day period do not

fall within the continuing violation exception. The Second Circuit has defined that exception narrowly. In *Lambert*, it stated that "[t]he continuing violation exception applies to cases involving specific discriminatory policies or mechanisms such as discriminatory seniority lists or discriminatory employment tests." *Lambert*, 10 F.3d at 53 (citations omitted); *see also Van Zant*, 80 F.3d at 713. By contrast, "multiple incidents of discrimination, even similar ones, that are not the result of a discriminatory policy or mechanism do not amount to a continuing violation," *Lambert*, 10 F.3d at 53, except "where specific and related instances of discrimination are permitted by the employer to continue unremedied for so long as to amount to a discriminatory policy or practice," *Cornwell*, 23 F.3d at 704. Allegations of discrimination, therefore, must reflect a "dogged" pattern of disparate treatment that persisted unremedied, despite [plaintiff's] complaints, over a number of years." *Cable v. New York State Thruway Auth.*, 4 F. Supp. 2d 120, 125 (N.D.N.Y. 1998). Courts in this circuit have consistently treated continuing violation arguments with disfavor. *See, e.g., Rose v. Port Auth.*, 13 F. Supp. 2d 516, 520 (S.D.N.Y. 1998) ("[T]he continuing violation doctrine is disfavored in [this] Circuit, and will be applied only upon a showing of compelling circumstances.") (quoting *Lloyd v. WABC-TV*, 879 F. Supp. 394, 399 (S.D.N.Y. 1995)); *Blesedell v. Mobil Oil Co.*, 708 F. Supp. 1408, 1415 (S.D.N.Y. 1989).

Plaintiff does not allege a specific discriminatory policy or mechanism, but rather a pattern of discrimination from 1989 to the time of her termination. (Pl.'s Mem. at 4-7.) She alleges the following discriminatory actions: (1) failure to grant her a promotion in June 1989 after more than two years

in B&A; (2) failure to grant her a promotion while she was in the GCT from July 1989 to June 1990; and (3) termination from Desk Audit in April 1992. These alleged acts of discrimination do not amount to a continuing violation. They are neither similar nor clearly related to each other. The circumstances surrounding each, including the parties involved, vary significantly. In B&A, Robert Weissman was plaintiff's direct supervisor/evaluator and Naji Ibrahim was the Unit Head; in GCT, Colin Jennings was her direct supervisor/evaluator, while her Unit Head was Volton Hutchinson and the Branch Chief was Martin Blumenkrantz; and in Desk Audit, Soukar George was her direct supervisor/evaluator, and the Unit Head was Mohammed Aly. Even assuming that the supervisors in each of the three groups actually shared a dislike of Chinese-Americans that led them to give Wang negative performance evaluations, deny her promotions, and terminate her, it would still be true that the acts were only "multiple incidents of discrimination" and not the result of "a discriminatory policy or mechanism." *Lambert*, 10 F.3d at 53. Moreover, there is no indication in the record that plaintiff notified the DOF of any discrimination until September 13, 1990, after she had been transferred out of GCT into Desk Audit. (Pl.'s Ex. M.) This appears to be the only time prior to the initiation of termination proceedings against Wang in November 1991 that she raised the issue of discrimination with anyone at DOF. Thus, it cannot fairly be said that the DOF "permitted" a pattern of discrimination to continue unremedied such that it amounted to a discriminatory policy or mechanism. *See Cornwell*, 23 F.3d at 704. Accordingly, to the extent plaintiff asserts Title VII claims based on incidents that took place prior to September 1, 1991, those claims are dismissed

as time barred. The only incident for which Wang can maintain a cause of action under Title VII is her termination in April 1992.

C. *The Title VII Standard*

Title VII of the Civil Rights Act of 1964 provides, in pertinent part:

> It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin.

42 U.S.C. § 2000e-2(a). With the goal of "progressively sharpen[ing] the inquiry into the elusive factual question of intentional discrimination." *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 255 n.8 (1981), the Supreme Court established the framework for pretext claims in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and in *Burdine*. Under this framework, the burden to persuade the trier of fact "that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff," while the burden of production shifts as follows:

> First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie

> case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.

Burdine, 450 U.S. at 252-253 (citation omitted) (quoting *McDonnell Douglas*, 411 U.S. at 802). Thus, the court must enter summary judgment for defendant when the plaintiff (1) fails to put forth a prima facie case, or (2) fails to rebut a defendant's well-presented, non-discriminatory reason for the adverse employment action.

1. *Plaintiff's Prima Facie Case*

In order to satisfy the first part of the *McDonnell Douglas* test, the plaintiff must demonstrate that (1) she belongs to a protected class; (2) her job performance was satisfactory; (3) she was the subject of an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination. *Chambers v. TRM Copy Ctrs. Corp.*, 43 F.3d 29, 37 (2d Cir. 1994). Once established, a prima facie case requires judgment for the plaintiff when the employer cannot articulate a non-discriminatory basis for termination, since "we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." *Burdine*, 450 U.S. at 254 (citation omitted).

Appendix B

Defendant concedes that Wang is of Chinese national origin and thus is a member of a protected class. (Def.'s Mem. at 11.) There is also no dispute that termination is an adverse employment action. The question on this motion is whether the plaintiff has met the second and fourth elements of her prima facie case, bearing in mind that the burden of establishing a prima facie case of discrimination is *de minimis*. *See Kerzer*, 156 F.3d at 40; *see also St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993) ("[q]uite obviously . . . what is required to establish the *McDonnell Douglas* prima facie case is infinitely less than what a directed verdict demands").

a. *Satisfactory Job Performance*

Defendant first argues that Wang cannot establish that her job performance was satisfactory. (Def.'s Mem. at 11-13.) To satisfy this element of the test, a plaintiff "need not demonstrate that [her] performance is flawless or superior," but rather only that she " 'possesses the basic skills necessary for performance of [the] job.' " *De la Cruz v. New York City Human Resources Admin. Dep't of Soc. Servs.*, 82 F.3d 16, 20 (2d Cir. 1996) (quoting *Powell v. Syracuse Univ.*, 580 F.2d 1150, 1155 (2d Cir.), *cert. denied*, 439 U.S. 984 (1978)); *but see Azar v. TGI Friday's, Inc.*, 945 F. Supp. 485, 497 (E.D.N.Y. 1996) ("[I]n a discharge case the requirement that the plaintiff be qualified for the job in question requires some allegation demonstrating satisfactory performance at the time of the discharge.") (quoting *Dugan v. Martin Marietta Aerospace*, 760 F.2d 397, 400 (2d Cir. 1985)).

Appendix B

Although defendant has provided evidence of plaintiff's unsatisfactory job performance, which is described below, there is sufficient evidence in the record to indicate that plaintiff possesses at least "the basic skills necessary" to work as a tax auditor. Plaintiff had worked for the DOF as a tax auditor for almost five years before the DOF initiated termination proceedings against her. Moreover, plaintiff received an overall "good" performance evaluation on two occasions, in January 1989 and June 1989. (Def.'s Ex. E, F; Pl.'s Rule 56.1 Resp. at ¶ 10.) *See de la Cruz*, 82 F.3d at 21 ("[A] performance evaluation that is positive overall is sufficient to withstand summary judgment at the prima facie stage of analysis."). Defendant contends in particular that plaintiff was unable to achieve satisfactory productivity. (Def.'s Mem. at 12; Declaration of Colin Jennings, May 18, 1999, at ¶ 7 ("Jennings Decl."); Declaration of Stephen Singer, May 18, 1999, at ¶ 5 ("Singer Decl."); Newman Decl. at ¶ 4.) However, both of the above-mentioned performance evaluations specifically note that Wang "has completed a sufficient number of cases in the last six months." (Def.'s Exs. E and F.) Defendant also contends that plaintiff was unable to perform the critical task of obtaining timely waivers to extend the statute of limitations. (Def.'s Mem. at 12; Jennings Decl. at ¶ 6; Newman Decl. at ¶ 4.) In the June 1988 performance evaluation, however, plaintiff is reported to have met the standard for this critical task; she received a "good" rating for it and Weissman commented that Wang "has worked well when she has a deadline (bar date)." (Def.'s Ex. D.) At any rate, the DOF assigned plaintiff to Desk Audit in June 1990 precisely because satisfactory performance in that unit did not include obtaining timely waivers. (Def.'s Rule 56.1 Statement at ¶ 21; Def.'s Ex. J.) Finally, defendant

points to plaintiff's failure to follow rules and orders of her supervisor. (Def.'s Mem. at 12-13; Singer Decl. at ¶¶ 6-8.) Plaintiff denies that she was deficient in this respect (Wang Decl. at ¶ 22), and in any event, misconduct is distinct from the issue of job qualification. "An individual may well have the ability to perform job duties, even if her conduct on the job is inappropriate or offensive." *Owens v. New York City Hous. Auth.*, 934 F.2d 405, 409 (2d Cir.), *cert. denied*, 502 U.S. 964 (1991). Accordingly, I find that plaintiff has met the second element of a prima facie case.

b. *Inference of Discrimination*

Defendant claims that plaintiff has not shown circumstances giving rise to an inference of invidious discrimination. Although I am mindful that I "must be alert to the fact that employers are rarely so cooperative as to include a notation in the personnel file that their actions are motivated by factors expressly forbidden by law," *Chambers*, 43 F.3d at 37 (quotation marks omitted), I agree.

One means of demonstrating an inference of discrimination is to point to "actions or remarks made by decisionmakers that could be viewed as reflecting a discriminatory animus." *Chertvoka v. Connecticut Gen. Life Ins. Co.*, 92 F.3d 81, 91 (2d Cir. 1996). The record in this case contains no such actions or remarks. This element of the prima facie case may also be established "by showing that a similarly situated individual not in [plaintiff's] protected group . . . was treated differently." *Tramble v. Columbia Univ.*, No. 97 Civ. 1271, 1999 WL 61826, at *5 (S.D.N.Y. Feb. 10, 1999). However, "[a]lthough the ultimate

burden in making a prima facie case is slight, the issue of whether fellow employees are similarly situated is somewhat strict." *Brown v. Middaugh*, 41 F. Supp. 2d 172, 184 (N.D.N.Y. 1999). As the Second Circuit has held, "[t]o be 'similarly situated,' the individuals with whom [a plaintiff] attempts to compare herself must be similarly situated in all material respects." *Shumway v. United Parcel Serv.*, 118 F.3d 60, 64 (2d Cir. 1997). More specifically,

> [e]mployees are not 'similarly situated' merely because their conduct might be analogized. Rather, in order to be similarly situated, other employees must have reported to the same supervisor as the plaintiff, must have been subject to the same standards governing performance evaluation and discipline, and must have engaged in conduct similar to the plaintiff's, without such differentiating or mitigating circumstances that would distinguish their conduct or the appropriate discipline for it.

Francis v. Runyon, 928 F. Supp. 195, 203 (E.D.N.Y. 1996) (quoting *Mazzella v. RCA Global Communications, Inc.*, 642 F. Supp. 1531, 1547 (S.D.N.Y. 1986), *aff'd*, 814 F.2d 653 (2d Cir. 1987)); *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992) (same).

Allegations of disparate treatment made without personal knowledge and unsupported by admissible evidence do not satisfy even the minimal burden which a plaintiff faces at the prima facie stage of proceedings. *See Tramble*, 1999 WL 61826, at *6; *Newman v. Montefiore Med. Ctr.*, No. 96 CIV

2687, 1996 WL 741599, at *4 (S.D.N.Y. Dec. 27, 1996). Neither do situations in which differentiating circumstances distinguish the conduct of co-workers. *See Mitchell*, 964 F.2d at 583 (inference of discrimination not established when plaintiff failed to produce sufficient information about co-workers alleged absenteeism and insubordination, and thus did not show that theirs was of "comparable seriousness" to her own); *McKinney v. Lanier Worldwide, Inc.*, No. 94 Civ. 8139, 1998 WL 677544, at *4-*5 (S.D.N.Y Sept. 29, 1998) (when plaintiff failed to allege that differently treated co-workers had the same negative record of performance, he failed to raise inference of discrimination); *Lea v. Amtrak*, No. 94 CV 1276, 1998 WL 426719, at *5 (E.D.N.Y. June 12, 1998) (plaintiff not similarly situated to co-workers when he had been involved in three incidents of misconduct within a single year and had record of misconduct spanning years); *Harmon v. Runyon*, No. 96 CIV 6080, 1997 WL 786383, at *5 (S.D.N.Y. Dec. 19, 1997) (history of extensive tardiness is factor differentiating plaintiff from co-workers).

Plaintiff cites numerous examples of non-Chinese-American co-workers being treated differently than she was treated, despite engaging in similar conduct. For most of these examples, plaintiff has failed to establish that she and the non-Chinese co-worker were "similarly situated in all material respects," or that the non-Chinese worker was treated differently than she was. *See Shumway*, 118 F.3d at 64. Further, although Wang appears to have established disparate treatment with regards to two co-workers, she has nonetheless failed to make out a prima facie case. As explained below, these two claims date from 1989, and in this case cannot show that plaintiff's termination, which was

initiated in November 1991, occurred under circumstances giving rise to an inference of discrimination.

i. *The Plaintiff's Attempt to Establish Disparate Treatment*

Again, to show that a co-worker was similarly situated, Wang must show that she and the co-worker reported to the same supervisor, were subject to the same standards, and engaged in similar conduct without differentiating or mitigating circumstances. *Mazzella*, 642 F. Supp. at 1547. In order to determine whether Wang has shown that a co-worker was similarly situated, I must have some understanding of how Wang herself was "situated." Defendant's version of this differs in many respects from Wang's, which is set forth in her declaration and deposition. Defendant points to negative aspects of plaintiff's performance that are reflected in her evaluations and the declarations of Colin Jennings, Stephen Singer, and Glenn Newman. Wang, on the other hand, denies some of the conduct attributed to her by the DOF, and alleges facts showing that co-workers performed no better than her. She also supplies the declaration of David Wilson, an Associate Tax Auditor who worked with her in B&A, who states that it was common practice for auditors to obtain statute of limitation waivers after the ninety-day guideline. Although defendant challenges the credibility of Wang's assertions, for purposes of summary judgment, her sworn statements cannot be disregarded, even when they are uncorroborated by any documentation. Thus, when there is conflict between the defendant's version of how Wang was situated and the plaintiff's version, I accept as true plaintiff's version.

Appendix B

(A) *B&A*

Defendant alleges that while plaintiff was working in B&A, her job performance was deficient because she "fell into the delay tactics of the taxpayers," (Def.'s Mem. at 11), and she did not obtain tax waivers prior to the three-month time minimum. (Def.'s Mem. at 11-12; Defendant's Reply Memorandum of Law at 4-5 ("Def.'s Reply Mem.").) Plaintiff denies that she was not aggressive with taxpayers. (Wang Dep. I at 80.) In addition, while admitting that she closed cases within 90 days of the statute of limitations, she asserts that she "never had a waiver problem before June 30, 1989." (Wang Decl. at ¶ 8; Wang Dep. I at 76-77.) She says that instead of obtaining waivers and sitting on cases like other auditors, she closed cases. (Wang Decl. at ¶ 8.) Moreover, she says that "it was common practice among auditors not to obtain the waivers within the ninety day period." (Wang Decl. at ¶ 6.) In this regard, the declaration of David Wilson, who worked in B&A at the same time as Wang, states that "[a]lthough the guidelines indicated that the waivers be obtained ninety days prior to the deadline, it was common practice in the office that auditors obtained the waivers closer to the expiration date." (Declaration of David Wilson, May 26, 1999, at ¶ 2 ("Wilson Decl.").) Plaintiff further asserts that from February 2, 1987 to February 1, 1989, she completed ten cases with assessments totaling about $275,462.38. (Wang Decl. at ¶ 2.) For the year ending June 30, 1989, she closed fourteen cases with assessments totaling about $242,753.17. (Wang Decl. at ¶ 10.) Accepting plaintiff's version of what her situation was in B&A, I turn to her individual disparate treatment claims.

Appendix B

In plaintiff's first claim of disparate treatment in B&A, she alleges that Mary Alice Cashin obtained waivers after the 90-day guideline (Wang Decl. at ¶ 6), let a case expire on June 30, 1989 (Wang Decl. at ¶¶ 12, 15; Wang Dep. II at 17), and, "from what [Wang] remembered," closed six cases with assessments totaling $68,000 (Wang Decl. at ¶¶ 12, 13). But Cashin was never disciplined with memorandums (Wang Decl. at ¶ 6, 15), and in fact was promoted to Associate Tax Auditor in June 1989 (Wang Decl. at ¶ 11). In contrast, while Wang admits that she, like Cashin, did not obtain waivers before the 90-day guideline, she asserts that she never let a waiver expire (Wang Decl. at ¶ 15; Wang Dep. I at 88), and that for the year ending June 1989 she closed fourteen cases with assessments totaling about $242,753.17, but she did not receive a promotion in June 1989. In addition, Wang produces her performance evaluations and one of Cashin's. When allowance is made for Wang's denial of the deficiencies reported by her evaluator, Weissman, these performance evaluations appear roughly equivalent. (Pl.'s Exs. D, E, F, 00065-00073; Def.'s Exs. D, E, F.) "The only explanation I could find [for this unfair treatment]," plaintiff says, "was discrimination [based] on national origin," and the fact that "Cashin was Jewish and so was our supervisor, Mr. Weissman." (Wang Decl. at ¶ 12; Wang Dep. II at 18.)

Defendant's response is that "[p]laintiff offers no evidence to support this claim other than her own statements," and that plaintiff's "own deposition testimony belies these statements." (Def.'s Reply Mem. at 5.) However, Wang's sworn statements (and the performance evaluations) are evidence, and her credibility is not at issue here. Since

Appendix B

Cashin and Wang had the same supervisor and performance standards in the B&A, and because Wang has stated facts in her declaration which show that her performance and conduct were similar to that of Cashin, she has shown that Cashin was similarly situated to her in 1989, but treated differently.

Second, plaintiff claims that Hugo Ruiz obtained waivers after the 90-day guideline (Wang Decl. at ¶ 6) and closed thirteen cases with assessments totaling $210,000 in the year ending June 1989 (Wang Decl. at ¶ 14), but was never disciplined with memorandums (Wang Decl. at ¶ 6, 15) and was promoted to Associate Tax Auditor in June 1989 (Wang Decl. at ¶ 11). In contrast, while Wang admits that she, like Ruiz, obtained waivers after the 90-day guideline, she states that for the year ending June 1989 she closed fourteen cases with assessments totaling about $242,753.17, but did not receive a promotion. In addition, she produces her performance evaluations and those of Ruiz, which appear fairly similar when allowance is made for Wang's denial of the deficient performance reported by Weissman. (Pl.'s Exs. D, E, F, 00074-00086; Def.'s Exs. D, E, F.) Defendant does not respond to this allegation. Ruiz appears to have been in Weissman's group with Wang prior to June 1989. Since Ruiz had the same supervisor in B&A as Wang, and because Wang has stated facts in her declaration that show that her performance and conduct were similar to that of Ruiz, she has shown that Ruiz was similarly situated to her, but treated differently.

Third, plaintiff states, without elaboration, that William Dimba was promoted to Associate Tax Auditor in June 1989. (Wang Decl. at ¶ 11.) Defendant has not responded to this

allegation. Dimba appears to have been under Weissman's supervision for the year ending June 1989, but before that he was supervised by Maria Zapata. (Pl.'s Exs. 00087-00097.) Weissman gave him good and superior ratings on his performance evaluation for the year ending June 1989. (Pl.'s Ex. 00093.) However, plaintiff fails to allege facts that show that she and Dimba were similarly situated in their performance and conduct.

In sum, viewing the evidence in the light most favorable to Wang, a jury could conclude that she was treated differently than two similarly situated co-workers in B&A, Cashin and Ruiz.

(B) *GCT*

The parties also present conflicting versions of how plaintiff was situated in GCT. Defendant alleges that while plaintiff was in GCT, her job performance was deficient because she failed to obtain waivers on a timely basis and her production was low. (Def.'s Mem. at 11-12; Def.'s Reply Mem. at 4-5; Jennings Decl. at ¶¶ 6, 7; Newman Decl. at ¶¶ 3, 4.) Plaintiff, while admitting that she did not obtain waivers within 90 days of case expiration, states that this was a common practice among auditors in GCT. (Wang Decl. at ¶ 15.) Plaintiff believes that she received disciplinary memoranda regarding waivers "because [she] was Chinese-American." (Wang Decl. at ¶ 15.) Plaintiff further alleges that her productivity was as good as or better than that of Roger Holder, Myles Griffiths, and individuals she refers to only as "Garraway" and "Cruz." Plaintiff does not, however, state specific facts that show what her actual productivity was during this period.

Appendix B

In plaintiff's first allegation of disparate treatment in GCT, she claims that Roger Holder obtained waivers after the 90-day guideline (Wang Decl. at ¶ 6), "expired" two cases (Wang Decl. at ¶ 7, 9, 13, 17), and closed two cases with assessments totaling $38,181.66 for the year ending June 1990 (Wang Decl. at 4, 17), but was never disciplined with memoranda (Wang Decl. at ¶ 6, 15), received a better evaluation than plaintiff in June 1990 (Wang Decl. at ¶ 17), and was promoted sometime between July 1989 and June 1990. (Wang Decl. at ¶ 5). In contrast, while Wang admits that she, like Holder, did not obtain waivers before the 90-day guideline, she asserts that she never let a case expire (Wang Decl. at ¶ 15; Wang Dep. I at 88), and that, for the year ending February 1, 1989 (while she was in B&A) she closed at least five cases with assessments totaling about $215,462.38. (Wang Decl. at ¶¶ 4, 13.)

These allegations are insufficient to show that Holder was similarly situated to Wang. Although Wang states facts regarding her productivity prior to February 1989, she does not show that her productivity was similar to that of Holder after June 1989, when they were both working in GCT. To the contrary, Plaintiff's Exhibit 00023, on which she relies, seems to show that Holder had completed twice as many cases as did Wang for the year ending June 1990. Moreover, Holder was employed in GCT as an Associate Tax Auditor (Pl .'s Ex. 00159), while Wang was a Tax Auditor (Pl.'s Ex. I). As plaintiff conceded at oral argument, employees in these positions were not subject to the same standards governing performance evaluation and discipline, and thus were not similarly situated. *See Mazzella*, 642 F. Supp. at 1547.

Second, plaintiff claims that Ella Hull obtained waivers after the 90-day guideline, but was never disciplined for it. (Wang Decl. at ¶ 6.) Plaintiff also claims that Hull expired a case and was promoted before anyone discovered the error. (Wang Dep. I at 86). But plaintiff has failed to allege that she and Hull were similarly situated in any other way, and it appears from the record that Hull was never in the same group as Wang. Thus, Wang has failed to show that Hull was similarly situated to her.

Third and fourth, plaintiff claims that a person named "Garraway" and a person named "Cruz" had lower productivity than she did. (Wang Decl. at ¶ 7.) However, she fails to allege that either was similarly situated to her or treated differently than she was. Moreover, Plaintiff's Exhibit 0042 indicates that Garraway and Cruz were in a different group with a different supervisor than Wang. Thus, plaintiff has not shown that Garraway and Cruz were similarly situated to her.

Fifth, plaintiff claims that for the year ending June 1990, Myles Griffiths closed three cases with assessments totaling $274,762.72, while plaintiff "had accumulated 24 closed cases [and] about $500,000 in assessments for three and a half years." Griffiths received a promotion to Associate Tax Auditor on June 30, 1990, but plaintiff did not. (Wang Decl. at ¶ 18.) Plaintiff believes that Griffiths received the promotion because "he is black and my Group Chief is black and my Unit Head is black." (Wang Dep. I at 97.) Defendant has not responded to this allegation. Nevertheless, the allegation is insufficient to show that Griffiths was similarly situated to Wang because Wang fails to establish specific

facts showing that her productivity was similar to that of Griffiths during the time they both worked in GCT under Colin Jennings. Wang cites only her total accumulation of closed cases over three and one-half years, and compares it to Griffiths' alleged accumulation for the year ending June 1990. While plaintiff refers to Plaintiff's Exhibit 00023 to demonstrate her point, that document seems to indicate that Griffiths had closed six cases for the year ending June 1990, with assessments totaling $274,762.72, while Wang had closed only three cases, with assessments totaling $23,883.60.

(C) *Desk Audit*

Once again, the parties have conflicting versions of how plaintiff performed in Desk Audit. Defendant alleges that plaintiff's performance was deficient because she maintained a production level below the standard of four simple cases per day. (Def.'s Mem. at 12; Def.'s Reply Mem. at 6; Singer Decl. at ¶ 5; Newman Decl. at ¶ 6.) Defendant also alleges that plaintiff failed to comply with departmental rules and to follow the orders of her supervisor. (Def.'s Mem. at 12-13; Def.'s Reply Mem. at 8; Singer Decl. at ¶¶ 6-8.) On the other hand, while plaintiff admits that she was closing an average of two cases per day, (Wang Dep. II at 33), she contends that the production level of four cases per day "was tantamount to termination since it was an impossible number to meet," and that no other employee was held to that standard. (Wang Decl. at ¶ 19.) Moreover, Wang asserts that there were "no complexity level [differences among auditors] according to [her] understanding because the clerk distributes the cases." (Wang Dep. II at 49.) Therefore, Wang argues,

not all of her cases were easy and simple. (Wang Dep. II at 49.) Finally, Wang states in her declaration that she "was never insubordinate nor did [she] ever fail to follow orders and always was a dedicated employee." (Wang Decl. at ¶ 22.)

In plaintiff's first allegation of disparate treatment in Desk Audit, she claims that for the year ending June 1992, Vera Nash closed 310 cases and received a superior rating. In contrast, Wang closed a total of 296 cases and was fired. (Wang Decl. at ¶ 20; Wang Dep. II at 89-90; Wang Dep. III at 122- 23.) Defendant responds to this allegation by pointing to Nash's performance evaluation for the year ending June 30, 1991. (Def.'s Reply Mem. at 8.) In that evaluation, Nash's supervisor, Soukar George, noted that although Nash's productivity was slightly below the standard for the unit, "she processes hard and complicated refund cases." (Pl.'s Ex. 00119-00121.) As mentioned above, however, Wang contends that cases were distributed to auditors by a clerk without regard for how complex the cases were, and that her own cases were not all easy and simple. (Wang Dep. II at 49.)

Plaintiff points to Plaintiff's Exhibit PPP to substantiate her allegations concerning Nash's and her own productivity. That document, a tally sheet showing monthly production figures for auditors in George's group for the year ending June 1992, does indeed show that Nash closed 310 cases for the year. However, it does not show, as Wang claims in her declaration, that Wang completed 296 cases. Instead, the document credits Wang with only 224 cases. Yet, that figure is also misleading because Wang was terminated on April

10; Nash thus worked almost three more months than Wang did that year. A different comparison involves looking at the first half of that twelve month period, when both Nash and Wang were working. From July 1991 through December 1991, the document shows that Nash completed 141 cases while Wang completed 139 cases.

Even so, plaintiff has failed to establish that Nash was similarly situated to her. While they shared George as their supervisor, Nash was an Associate Tax Auditor (Pl.'s Exs. 00119-00140), while Wang was a Tax Auditor. (Def.'s Exs. N and S.) Thus, they were not subject to the same standards governing performance evaluation and discipline, and thus were not similarly situated. *See Mazzella*, 642 F. Supp. at 1547. Moreover, plaintiff, unlike Nash, had accumulated a history of unsatisfactory performance evaluations by November 10, 1991, when she was served with termination charges. (Def.'s Mem. at 14; Newman Decl. at ¶¶ 3, 6-8.) Indeed, in the June 1990 Evaluation, Colin Jennings gave Wang an overall unsatisfactory evaluation, rating her performance unsatisfactory in five out of nine critical tasks. He recommended that Wang "be transferred to a unit where statute control is not required and raising or discussing audit or tax issues are not relevant to the overall performance and production." (Def.'s Ex. J.) Accordingly, Wang was transferred to Desk Audit at the end of June 1990. About six months later, in January 1991, Wang received an unsatisfactory overall evaluation from her new supervisor, Soukar George. (Def.'s Ex. N.) Again, in the June 1991 Evaluation, George rated Wang's performance unsatisfactory in almost all respects. (Def.'s Ex. S.) In contrast, there is no indication or allegation that Nash had such a history of

unsatisfactory performance when she received a superior evaluation from George in June 1992. Instead, Nash's performance evaluation for the year ending June 1991 shows that Nash received a good evaluation. (Pl.'s Ex. 00019.) This disparity in prior performance history is another "differentiating circumstance" that defeats Wang's claim that she was similarly situated to Nash.

I am mindful of Wang's challenge to the accuracy of all the performance evaluations she received at DOF. This would seem to make it difficult to decide that she was not similarly situated to Nash because of her history of bad evaluations, as Wang is saying, in effect, that the evaluations should not have been bad in the first place. Yet, notwithstanding her attempts to show disparate treatment, Wang has provided no evidence that any of the evaluations she received were not good faith attempts by her supervisors to evaluate her performance. As explained above, Wang's allegations regarding her time in GCT under Jennings fail to constitute even a prima facie case of disparate treatment; and, as explained below, Wang's factual allegations of disparate treatment for Motayman Shafik and Mary Lou Michaels in Desk Audit are limited to the time after June 1991, and are also insufficient to establish an inference of discrimination. With that said, there remains nothing besides conclusory allegations to support any complaint from Wang that her performance evaluations in June 1990, January 1991, and June 1991 were biased or inaccurate. *See Shabat v. Blue Cross Blue Shield*, 925 F. Supp. 977, 987 (W.D.N.Y. 1996) ("An employee's mere dissatisfaction with the pace of his career progress, based on his subjective assessment of his own performance, is not enough to make out a prima facie case under Title VII."), *aff'd*, 108 F.3d 1370 (2d Cir. 1997).

Appendix B

In contrast, defendant has supplied the declarations of Colin Jennings and Stephen Singer. Jennings asserts that "[t]he unsatisfactory evaluation that I gave Ms. Wang [in June 1990] was based on her unsatisfactory performance. It had nothing to do with her nationality or ethnic background." (Jennings Decl. at ¶ 9.) Singer, who supervised Wang for a period of time in George's absence, states that he communicated to George the poor performance by Wang that he observed, and that George subsequently memorialized this information in the January 1991 and June 1991 evaluations. (Singer Decl. at ¶ 5.) Thus, it is undisputed that, when George and the termination decisionmakers made their evaluations and decisions in 1991 and 1992, they had before them what they perceived to be a series of good faith evaluations by Jennings and George which indicated that Wang was a chronically unsatisfactory employee. Since Nash did not have such a poor record, but rather had a good one, she was not similarly situated to Wang during the year ending June 1992, when she received a superior evaluation and Wang was terminated.

Plaintiff's second claim of disparate treatment in Desk Audit is that she "did better than Mr. Motayam Shafik in closing cases," (Wang Decl. at ¶ 21; Wang Dep. II at 86-87), and that Shafik "had the lowest production in the group one year and received a good performance." (Pl.'s Rule 56.1 Resp. at ¶¶ 23, 26.) She believes that because Shafik and the Unit Head were Egyptians, plaintiff "was rated lower because they discriminated against [her] national origin." (Wang Decl. at ¶ 21.) Plaintiff's Exhibits KK, 00109, and 00114 indicate that Shafik was in a different group with a different supervisor than plaintiff. Moreover, because Shafik

was an Associate Tax Auditor (Pl.'s Exs. 00109-00118), while Wang was a Tax Auditor, (Def.'s Exs. N and S), they were not subject to the same standards governing performance evaluation and discipline. Thus, plaintiff has failed to show that Shafik was similarly situated to her.

Plaintiff's third and last claim of disparate treatment in Desk Audit concerns Mary Lou Michaels. Michaels, Wang alleges, received an evaluation that was similar to Wang's in June 1991, but the next year the supervisors gave Michaels a better evaluation. Wang asserts that the difference was "due to discrimination." (Wang Dep. II at 86-87.) Defendant responds to this allegation by pointing to Michaels's performance evaluation for the year ending June 1991, which has been submitted as Plaintiff's Exhibit 00098. (Def.'s Reply Mem. at 7.) George, the defendant points out, noted Michaels's poor performance on the evaluation and gave her an unsatisfactory overall rating, just as he had for Wang. Defendant does not explain why Michaels received a good overall rating one year later (Pl.'s Ex. 00104), but Plaintiff's Exhibit PPP indicates that in the months after she received her unsatisfactory rating, Michaels increased her productivity dramatically. While Michaels completed 130 cases from July 1991 through October 1991, Wang completed only 75. Moreover, as with Nash, there is no allegation that Michaels had the same history of unsatisfactory performance evaluations that Wang did. Since plaintiff has failed to allege that Michaels had a history of unsatisfactory performance that spanned two different groups and two supervisors, and that her performance was similar to that of Michaels after June 1991, she has failed to show that she was similarly situated to Michaels when termination proceedings began against her in November 1991.

Appendix B

ii. *The Effect of Plaintiff's Allegations*

Wang has thus established that the decision of Weissman and Ibrahim not to promote her in June 1989 occurred in circumstances giving rise to an inference of discrimination. As explained above, however, plaintiff's challenge to that determination is time-barred. The only timely claim before me arises out of plaintiff's termination. Therefore, inferences that may arise from June 1989 are only relevant if they provide relevant background evidence for the termination claim. *See United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558 (1977) ("[A] discriminatory act which is not made the basis for a timely charge . . . may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue.").

In the circumstances of this case, however, an inference of discrimination arising out of disparate treatment by Weissman and Ibrahim in June 1989 does not suggest that the initiation of termination proceedings against plaintiff in November 1991 was motivated by discriminatory animus. There is no indication in the record that either Weissman or Ibrahim was involved in DOF's decision to terminate Wang. Although it is not clear what happened to Weissman after June 1989, Ibrahim left the office for California shortly after Wang did not receive a promotion. (Wang Dep. III at 162.) Thus, the only conceivable connection between the discrimination that may have occurred in June 1989 and that alleged to have occurred in and after November 1991 would be that the termination decisionmakers at DOF based their decision in part on Wang's performance evaluations from the earlier period, which were written by Weissman and

approved by Ibrahim. While defendant's lawyer argues that aspects of Wang's performance in B&A are valid, non-discriminatory reasons for her termination, there is no indication in the record that the decision to terminate was in fact based on the record of that earlier conduct.[13] Indeed, the DOF's November 1991 Statement of Charges, which lists the charges and specifications that were proffered against Wang, references performance and misconduct dating back only to Wang's time in GCT, but no further. (Def.'s Ex. U.) Kathy Barnett, who conducted Wang's informal conference and recommended that DOF's request for termination be upheld, specifically informed Wang in her March 20, 1992 decision that all of the charges that had been presented to Barnett "refer to incidents which occurred within eighteen months of the time you were served, and were therefore valid

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13. In her motion to supplement the record, plaintiff argues that "Newman's affidavit (paragraph 7) and others, they went back two years in evaluations," and that, "[a]ccordingly, I could argue my case going back two years." (Pl.'s Supplement.) Two years prior to November 1991, however, would be November 1989, several months after Wang received her evaluations from Weissman and Ibrahim. In any event, Newman's declaration does not refer to any conduct on the part of Wang that occurred prior to her time in GCT. (Newman Decl. at ¶ 3.) Rather, Newman describes how Wang was reassigned to Desk Audit because her performance in GCT was unsatisfactory (*Id.* at ¶¶ 4 and 5), and how, in Desk Audit, Wang's performance did not improve and she "received successive unsatisfactory evaluations from the supervisor of that unit [in January 1991 and June 1991]." (*Id.* at ¶ 6.) In Paragraph 7 of the declaration — the paragraph cited by plaintiff — Newman explains that "[i]f an employee receives two successive unsatisfactory evaluations, the Department of Finance may terminate the employee," and that, as a

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for my consideration." (Def.'s Ex. W.)[14] Likewise, the decision of the City's Office of Labor Relations to uphold Wang's termination was based only on evidence of her conduct in GCT and Desk Audit. (Def.'s Ex. Z.) Since Weissman and Ibrahim had no connection whatsoever to Wang's termination, no inference of discrimination surrounding her termination arises from their alleged disparate treatment of non-Chinese employees in 1989. *See McLee v. Chrysler Corp.*, 109 F.3d 130, 136 (2d Cir. 1997) (allegations of bias against a supervisor who was not consulted about a termination decision "provide no basis for imputing to [the decisionmaker] an invidious motivation for the discharge"); *O'Sullivan v. New York Times*, 37 F. Supp. 2d 307, 321 (S.D.N.Y. 1999) (pretext cannot be shown by managers' discriminatory remarks when managers were uninvolved in decision to terminate); *Legendre v. Chase Manhattan Bank*, No. 94 CIV. 2911, 1996 WL 514874, at *6 (S.D.N.Y. Sept. 10, 1996) (alleged eight month old remark by human resources coordinator held "too remote in time and place from . . . termination to create a rational inference to [defendant's] discriminatory intent," especially when plaintiff offered "no competent evidence that [the coordinator] played a role in [the termination]"); *cf. Owens*,

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result, Wang was terminated. (*Id.* at ¶ 7.) Likewise, neither the declaration of Colin Jennings nor that of Stephen Singer refers to anything that happened before July 1989. (Jennings Decl. at ¶ 5; Singer Decl. at ¶ 3.)

14. The date of Wang's last evaluation in B&A, June 30, 1989, is more than twenty-eight months from the time Wang was served on November 14, 1991. (Def.'s Ex. U; Wang Dep. III at 130-31.)

934 F.2d at 410 (holding that statements by individuals with "substantial influence" over plaintiff's employment raise genuine issue of fact on issue of pretextuality).

This discussion of attenuating circumstances is also relevant to plaintiff's allegation that Ibrahim "had admitted to a sexual harassment charge from a Chinese-American," and that "[a]s a result of his history concerning Chinese Americans," he denied Wang a promotion. (Compl. at ¶ 8.) Plaintiff claims that she knows about the harassment incident, which supposedly occurred in 1985 or 1986, before plaintiff started working for the City, because a secretary named Jacqueline told her about it. (Wang Dep. II at 159-60.)[15] Ibrahim's dislike of Chinese-Americans, plaintiff believes, can be inferred from the alleged incident of sexual harassment; from the fact that she and another Chinese-American co-worker, Millie Tam, were not promoted; and because Ibrahim gave plaintiff "dirty looks" or "eye stare" after she did not go to his farewell lunch in June 1989. (Wang Dep. III at 160; Pl.'s Ex. M.) Wang chose not to attend the lunch because that was the day that she found out that Ibrahim had "discriminated against [her]" by giving Mary Alice Cashin a promotion, but not giving one to her. (Wang Dep. III at 160-61.)

This series of allegations does not give rise to an inference of discrimination surrounding Wang's termination. First of all, Wang's allegation of sexual harassment appears to be based on nothing more than an office rumor. Wang has

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15. Wang could not remember Jacqueline's last name. (Wang Dep. II at 160.)

no personal knowledge that the event ever took place, and she has failed to proffer admissible evidence that it did. Second, "dirty looks" do not give rise to an inference of discrimination, especially when there is an obvious non-discriminatory reason for the dirty looks. Here, Wang had just snubbed Ibrahim by not going to his farewell lunch. Third, Plaintiff's Exhibits 00056 and 00059 indicate that Millie Tam did not in fact receive the same treatment as Wang; instead, Tam received a promotion to Associate Tax Auditor during the time that she and Wang were in B&A. Finally, as discussed, Ibrahim left the office for California in 1989. (Wang Dep. III at 162.) Thus, the only possible connection Ibrahim could have to circumstances surrounding Wang's termination in 1992 is that he approved the evaluations given to Wang by her direct supervisor. Weissman, in 1988 and 1989, and those evaluations were relied on by the individuals who decided to terminate Wang in 1992. Since there is no evidence in the record that those evaluations were actually considered by the individuals who decided to terminate Wang in 1992, no inference of discrimination surrounding that action is raised. *See McLee*, 109 F.3d at 136.

2. *Legitimate Non-Discriminatory Reasons*

If Wang had established a prima facie case, the burden would then shift to the DOF to rebut the presumption of discrimination by producing evidence that it dismissed Wang for a legitimate, non-discriminatory reason. *See Burdine*, 450 U.S. at 252-53. This requirement forces the defendant to "give an explanation for its conduct, in order to prevent employers from simply remaining silent while the plaintiff

founders on the difficulty of proving discriminatory intent." *Fisher v. Vassar College*, 114 F.3d 1332, 1335 (2d Cir. 1997) (en banc), *cert. denied*, 118 S. Ct. 851 (1998).

Defendant claims that plaintiff was terminated because of incompetence and insubordination. Generally, DOF provides the following evidence that plaintiff's performance in Desk Audit was not satisfactory at the time of her termination: (1) the January 1991 and July 1991 Performance Evaluations, in which Soukar George rated plaintiff's overall performance as "unsatisfactory" (Def.'s Ex. N and S); (2) the declaration of Stephen Singer (who filled in as plaintiff's supervisor when George was ill and absent from work in the fall of 1990), in which Singer states that he observed firsthand that plaintiff "was unable to perform the work required of tax auditors" and that "she had to be assisted regularly regarding the work that she was responsible for" (Singer Decl. at ¶ 5); and (3) the declaration of Glenn Newman, former Deputy Commissioner of the DOF, who states that he came to the conclusion that plaintiff deserved an unsatisfactory rating for the work that she did under Colin Jennings in GCT, and that her "performance when assigned to [Desk Audit] did not improve." (Newman Decl. at ¶¶ 4-6.)

Specifically, defendant provides the following evidence that plaintiff's production level in Desk Audit was unsatisfactory: (1) the January 1991 Evaluation in which George noted that plaintiff "maintained a very low production level as her daily average production is less than one case while the standard calls for at least four simple cases or a minimum of two difficult cases" and "all the cases in

[Wang's] inventory are easy and simple cases" (Def.'s Ex. N); (2) the July 1991 Evaluation in which George reported that plaintiff's "daily average production is only 1.15, while the standards for the Unit calls for at least four simple cases or a minimum of two difficult cases, and all she has are easy and simple cases" (Def.'s Ex. S); (3) the declaration of Singer, who states that he observed firsthand that plaintiff "maintained very low production" (Singer Decl. at ¶ 5); (4) a handwritten note on a production report, dated May 5, 1991, in which George warned Wang about her low production (Def.'s Ex. Q); and (5) a memorandum dated June 21, 1991, memorializing a conversation of that day in which George cautioned Wang about her poor productivity during the period from July 1, 1990 to May 30, 1991. (Def.'s Ex. R.)

Moreover, defendant provides the following evidence of plaintiff's failure to comply with departmental rules and failure to follow orders of her supervisors while she worked in Desk Audit: (1) a memorandum dated March 7, 1991, in which George told Mohammed Aly that, the day before, Wang had refused to follow George's instructions regarding the recording of a case adjustment on the computer system (Def.'s Ex. O); (2) a memorandum from George to Wang dated March 11, 1991, in which George confirmed that he had cautioned Wang about her alleged refusal on January 31, 1991, to bring him the file from one of her closed cases so that he could respond to a taxpayer's call (Def.'s Ex. P); (3) a memorandum to Wang dated September 10, 1991, in which George confirmed that on September 6, 1991, he had asked Wang to make changes to one of her cases that she had previously refused to make (Def.'s Ex. T); (4) a

memorandum dated January 29, 1992, in which George listed eight more incidents which he believed demonstrated unacceptable performance and conduct on the part of Wang (Def.'s Ex. V); and (5) the declaration of Singer, who states that he observed plaintiff on many occasions become "openly insubordinate" to George when George attempted to counsel her on her need to improve her performance (Singer Decl. at ¶ 6), and that plaintiff once "acted in an inappropriate and insubordinate manner" to Singer when she demanded that he leave a computer terminal at which he was working. (Singer Decl. at ¶ 8.)

Based on this evidence of poor performance and insubordination, the DOF has advanced legitimate, non-discriminatory reasons for its decision to terminate Wang.

3. *Pretext*

Once the defendant has rebutted the plaintiff's prima facie case, the burden then falls upon the plaintiff to show pretext. *See Woroski v. Nashua Corp.*, 31 F.3d 105, 108-09 (2d Cir. 1994). In the summary judgment context, this means "that the plaintiff must establish a genuine issue of material fact either through direct, statistical or circumstantial evidence as to whether the employer's reason for discharging her is false and as to whether it is more likely that a discriminatory reason motivated the employer to make the adverse employment decision." *Kerzer v. Kingly Mfg.*, 156 F.3d 396, 401 (2d Cir. 1998) (quoting *Gallo v. Prudential Residential Servs., Ltd. Partnership*, 22 F.3d 1219, 1225 (2d Cir. 1994)). Furthermore, the Second Circuit has cautioned that, in order to survive a motion for summary judgment,

the plaintiff must present more than "conclusory allegations of discrimination;" she must offer "concrete particulars" to substantiate her claim. *Meiri v. Dacon*, 759 F.2d 989, 998 (2d Cir.), *cert. denied*, 474 U.S. 829 (1985); *see also Cunliffe v. Sikorsky Aircraft Corp.*, 9 F. Supp. 2d 125, 133 (D. Conn. 1998) (" '[I]t [is] incumbent upon the plaintiff to present specific facts — not conclusory allegations, speculation, surmise, or feelings — to show the existence of genuine issues for trial.' ") (quoting *Agugliaro v. Brooks Bros., Inc.*, 927 F. Supp. 741, 747 (S.D.N.Y. 1996)). In short, plaintiff must put forth evidence that supports a rational finding that the proffered reason for the discharge is false and that more likely than not the employee's protected status was the real reason for the discharge. *See Holt v. KMI-Continental, Inc.*, 95 F.3d 123, 129 (2d Cir. 1996), *cert. denied*, 520 U.S. 1228 (1997); *see also Viola v. Phillips Med. Sys. of N. Am.*, 42 F.3d 712, 716 (2d Cir. 1994); *Woroski*, 31 F.3d at 110.

Plaintiff does not establish a genuine issue of fact as to whether the DOF's proffered reasons for terminating her employment serve as pretexts for discrimination based on her national origin. Most of Wang's allegations amount to precisely the kind of "conclusory statements, conjecture, or speculation . . . [that] will not defeat summary judgment." *Kulak v. City of New York*, 88 F.3d 63, 71 (2d Cir. 1996). Although a plaintiff may show pretext by presenting evidence of disparate treatment, *Hargett v. National Westminster Bank, USA*, 78 F.3d 836, 839 (2d Cir.), *cert. denied*, 519 U.S. 824 (1996), Wang, as discussed above, has not sufficiently supported her claims that she was similarly situated in all material respects to the other GCT and Desk Audit employees she mentions, or that those employees were

treated differently. *See Henry v. Daytop Village, Inc.*, 42 F.3d 89 at 97 (2d Cir. 1994) (when plaintiff failed to corroborate allegation of favorable treatment with any documentation or affidavits based on personal knowledge, he failed to show that those employees were similarly situated, and evidence was insufficient to create a genuine dispute with respect to disparate treatment claim). As for Wang's claims of disparate treatment for Cashin and Ruiz, even if an inference of discrimination is raised surrounding their promotions by Weissman and Ibrahim in 1989, no reasonable fact-finder could conclude from the evidence in the record that Weissman or Ibrahim had any input in DOF's deliberations regarding Wang in late 1991 through early 1992, or that their B&A evaluations had any invidious impact on the process by which DOF decided to terminate Wang's employment.

CONCLUSION

For the reasons set forth above, defendant's summary judgment motion is granted and the case is dismissed in its entirety.

So ordered.

s/ John Gleeson
JOHN GLEESON
U.S. DISTRICT JUDGE

Dated: July 21, 1999
Brooklyn, New York

APPENDIX C — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE EASTERN DISTRICT OF NEW YORK DATED JULY 27, 1999 AND FILED JULY 29, 1999

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

96-CV-5170 (JG)

RU WANG,

Plaintiff,

– against –

N.Y.C. DEPARTMENT OF FINANCE,

Defendant.

JUDGMENT

A Memorandum and Order of the Honorable John Gleeson, United States District Judge, having been filed on July 22, 1999, granting the defendant's motion for summary judgment; and, dismissing the case in its entirety; it is

ORDERED and ADJUDGED that the plaintiff take nothing of defendant; and, that the defendant's motion for summary judgment is granted.

Dated: Brooklyn, New York
July 27, 1999

s/ Robert C. Heinemann
ROBERT C. HEINEMANN
Clerk of Court

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING MOTION FOR PANEL REHEARING DATED AND FILED DECEMBER 1, 2000

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

99-9020
Docket Number

Wang

v.

N.Y.C. Dept of Fin

Use short title

NOTICE OF MOTION
state type of motion
for Panel rehearing

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Ru Wang, Pro Se
73 Claradon Lane
Staten Island, NY 10305
718-442-4457

Appendix D

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Mr. Paul Aronson
Corporation Counsel
100 Church Street, 2-154
NY NY 10007
212-788-1184

* * *

Has service been effected? ☒ Yes ☐ No
Is oral argument desired? ☒ Yes ☐ No
(Substantive motions only)

* * *

Has argument date of appeal been set:
A. by scheduling order? ☐ Yes ☒ No

* * *

Judge or agency whose order is being appealed:
Fred I. Parker, Circuit Judge. John Gleeson, District Judge, 96 CV 5170 (JG).

* * *

Brief statement of the relief requested:
Prima facie and termination requirement were met. Order should be reversed.

* * *

Appendix D

By: *(Signature of attorney)*

s/ Ru Wang
Signed name must be printed beneath
Ru Wang

Appearing for: *(Name of party)*
Appellant or Petitioner:
☒ Plaintiff ☐ Defendant

Date
8/4/2000

* * *

ORDER

Before: Hon. Joseph M. McLaughlin, Hon. Fred I. Parker, C.JJ., Hon. Peter C. Dorsey*, D.J.

IT IS HEREBY ORDERED that the motion be and it hereby is **denied**.

FOR THE COURT:
ROSEANN B. MacKECHNIE,
Clerk
by

12/1/2000
Date

s/ Arthur M. Heller
Arthur M. Heller
Administrative Attorney

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* The Honorable Peter C. Dorsey, Senior District Judge of the United States District Court for the District of Connecticut, sitting by designation.